

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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AMERICAN PHYSICIANS  
ASSURANCE CORPORATION,

Plaintiff-Counter-Defendant,

v.

DONALD JAMES HAM, M.D.,  
ALAMOGORDO EYE CLINIC, INC.,

Defendants-Counter-Plaintiffs,

and THE ESTATE OF MARTHA  
VALENCIA CARDON, DECEASED, by  
and through Personal Representative  
ELIZABETH ALVAREZ,

Defendant.

No. 1:08-cv-638 PK/ACT

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ORDER

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THIS MATTER comes on for consideration of the Motion for Protective Order for Trial Appearance of William C. Madison, Esq. filed April 23, 2010 (Doc. 323) and the Motion for Protective Order for Trial Appearance of Rebecca Shaw Kenny, Esq. filed April 23, 2010 (Doc. 324). Mr. Madison was notified that he would be subpoenaed and Ms. Kenny has been subpoenaed to testify at the upcoming trial of this matter commencing June 15, 2010. In January 2010, they advised counsel that they had registered and fully paid for the New Mexico State Bar's 7th Annual CLE at Sea (Alaska)

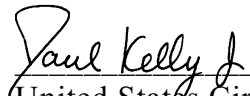
program scheduled for June 11 - June 18, 2010. Each witness has filed a notice of unavailability for this time period. Docs. 325, 326.

In an effort to resolve this matter promptly, the court had its deputy clerk contact counsel for either side to inquire whether the matter had been resolved. Mr. Dow advises that Mr. Madison will not be called until the second week of the trial (June 21), but that Ms. Kenny would be called on either Thursday or Friday of the first week (June 17 or 18), thus, Mr. Dow could not agree to releasing her. Mr. Fields is in agreement concerning the timing of Mr. Madison's testimony. Mr. Fields indicated that he would consent to a video trial deposition of Ms. Kenny should her testimony be needed the first week of trial.

Upon consideration thereof, the motions will be granted. Mr. Madison and Ms. Kenny will be unavailable to testify at trial during the week of June 15, 2010; counsel may rely on a video trial deposition of Ms. Kenny if needed during that time period.

IT IS SO ORDERED.

DATED this 7th day of May 2010, at Santa Fe, New Mexico.

  
United States Circuit Judge  
Sitting by Designation